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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,282	02/17/2004	Charles L. Deschenes	81204D3	7074
23685 7590 03/16/2009 KRIEGSMAN & KRIEGSMAN 30 TURNPIKE ROAD, SUITE 9 SOUTHBOROUGH, MA 01772				
EXAMINER VARGOT, MATHEU'D				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
03/16/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/780,282

## Applicant(s)

DESCHENES ET AL.

## Examiner

Mathieu D. Vargot

## Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 70-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 70-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70-76 and 81-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mello et al (see Fig. 1) in view of Williams et al (see col. 1, lines 52-64 and col. 4, lines 1-9; 12, 14 and 42 in Fig. 1).

Mello et al (Fig. 1) discloses the basic claimed method of forming a laminate structure by providing a first web (28) composed of a plurality of elements (trays 30), the web being made by continuous molding and being of a rigid plastic material (see claim 1 in the reference), providing a second web (34) composed of a plurality of elements (lids or covers 36) that are alignable with the first elements, the second web being made by a continuous molding and also being a rigid material (see claim 1) and passing the first and second web through a platen sealing and chilling station (20). Note that the primary reference also teaches the instant aspect of having the respective elements of each web formed in an orthogonal matrix, with multiple elements arrayed across the width of each web—see Fig. 5. Essentially, the primary reference fails to teach that the webs are passed through a lamination nip to fixedly join the first and second elements to form the laminate structure. Williams et al discloses a method of forming packages across the width of webs which are laminated together in a roller nip (see 12, 14 and 42 in Fig. 1). The secondary reference also teaches the equivalence of roller nips and opposed platens to perform the lamination—see column 4, lines 1-9. It would have been obvious

to one of ordinary skill in the art to modify the method of the primary reference by using a roller nip in lieu of a platen since such are known equivalents in the art as taught by Williams et al. It is submitted that continuous molding through a rotary extruder would have been an obvious expedient over thermoforming a web as disclosed in the primary reference. The first web of Mello et al is taught as being a rigid plastic while the second web is disclosed as being a metallized foil. Typically, such foils are made of plastic. However, it certainly would have been obvious to have provided a rigid plastic for both webs, dependent on the exact material desired for the container. The first and second elements of the webs of Mello et al are trough shaped as set forth in instant claim 83. The exact fitting of these elements—ie, press-fitting at the nip-- would have been an obvious feature dependent on the exact shape desired for the container.

2. Claims 77-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mello et al (see Fig. 1) in view of Williams et al (see col. 1, lines 52-64 and col. 4, lines 1-9; 12, 14 and 42 in Fig. 1) and Anderson, III et al.

Mello et al and Williams et al are applied for reasons of record as set forth in paragraph 1, supra, with Anderson, III et al being applied for reasons of record as set forth in paragraph 2 of the last office action. It is submitted that Mello et al and Williams et al disclose methods of forming containers and that these methods would have been readily adapted to house an EAS marker as generally taught in Anderson, III et al.

3.Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

In view of the new grounds of rejection, applicant's comments have been rendered essentially moot. Needless to say, Mello et al and Williams et al are better references against the claims as amended than were the previous references. It is still believed that Anderson III, et al would be validly applied to teach the incorporation of an EAS marker in a package, the reference clearly showing this. One of ordinary skill in the art would have had no problem adapting the container forming method taught in the primary reference to incorporate an EAS marker as taught in Anderson III, et al.

4.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot  
March 11, 2009

/Mathieu D. Vargot/  
Primary Examiner, Art Unit 1791